

Senate Study Bill 1206

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY
GENERAL BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to actions injurious to dependent adults and
2 residents of health care facilities and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1340DP 83
5 rh/rj/8

PAG LIN

1 1 Section 1. Section 235B.2, subsection 5, paragraph a,
1 2 subparagraph (1), subparagraph division (a), Code 2009, is
1 3 amended to read as follows:
1 4 (a) ~~Physical Bodily injury to, or injury which is at a~~
1 5 ~~variance with the history given of the injury, or unreasonable~~
1 6 ~~confinement, unreasonable punishment, harassment, or assault~~
1 7 ~~of a dependent adult.~~
1 8 Sec. 2. Section 235B.2, subsection 5, paragraph a,
1 9 subparagraph (3), Code 2009, is amended to read as follows:
1 10 (3) (a) Sexual exploitation of a dependent adult by a
1 11 caretaker.
1 12 (b) "Sexual exploitation" means any consensual or
1 13 nonconsensual sexual conduct with a dependent adult ~~for the~~
1 14 ~~purpose of arousing or satisfying the sexual desires of the~~
1 15 ~~caretaker or dependent adult, which includes but is not~~
1 16 ~~limited to kissing; touching of the clothed or unclothed inner~~
1 17 ~~thigh, breast, groin, buttock, anus, pubes, or genitals; or a~~
1 18 ~~sex act, as defined in section 702.17. "Sexual exploitation"~~
1 19 ~~includes the transmission, display, taking of electronic~~
1 20 ~~images of the unclothed breast, groin, buttock, anus, pubes,~~
1 21 ~~or genitals of a dependent adult by a caretaker for a purpose~~
1 22 ~~not related to treatment or diagnosis or as part of an ongoing~~
1 23 ~~investigation.~~ Sexual exploitation does not include touching
1 24 which is part of a necessary examination, treatment, or care
1 25 by a caretaker acting within the scope of the practice or
1 26 employment of the caretaker; the exchange of a brief touch or
1 27 hug between the dependent adult and a caretaker for the
1 28 purpose of reassurance, comfort, or casual friendship; or
1 29 touching between spouses or domestic partners in an intimate
1 30 relationship.
1 31 Sec. 3. Section 235B.2, Code 2009, is amended by adding
1 32 the following new subsection:
1 33 NEW SUBSECTION. 9A. "Intimate relationship" means a
1 34 significant romantic involvement between two persons that need
1 35 not include sexual involvement, but does not include a casual
2 1 social relationship or association in a business or
2 2 professional capacity. In determining whether persons are in
2 3 an intimate relationship, the following nonexclusive list of
2 4 factors may be considered:
2 5 a. The duration of the relationship.
2 6 b. The frequency of interaction.
2 7 c. Whether the relationship has been terminated.
2 8 d. The nature of the relationship, characterized by either
2 9 person's expectation of sexual or romantic involvement.
2 10 Sec. 4. Section 235B.3, subsection 4, Code 2009, is
2 11 amended to read as follows:
2 12 4. An employee of a financial institution ~~may~~ shall report
2 13 suspected financial exploitation of a dependent adult to the
2 14 department.
2 15 Sec. 5. Section 235B.5, subsection 5, Code 2009, is
2 16 amended to read as follows:
2 17 5. An oral report of suspected dependent adult abuse
2 18 initially made to the central registry regarding a facility or
2 19 program as defined in section 235E.1 shall be transmitted by

2 20 the department to the department of inspections and appeals
2 21 and to the appropriate law enforcement agency on the first
2 22 working day following the submitting of the report.
2 23 Sec. 6. Section 235B.6, subsection 2, paragraph b,
2 24 subparagraph (4), Code 2009, is amended to read as follows:
2 25 (4) A law enforcement officer or employee of a county
2 26 attorney's office responsible for assisting in an
2 27 investigation of a dependent adult abuse allegation or a
2 28 prosecution of a case of dependent adult abuse.
2 29 Sec. 7. Section 235B.7, subsection 3, Code 2009, is
2 30 amended to read as follows:
2 31 3. Subsections 1 and 2 do not apply to dependent adult
2 32 abuse information that is disseminated to an employee of the
2 33 department, ~~or to the attorney representing the department as~~
2 34 authorized by section 235B.6, or to a law enforcement agency
2 35 or county attorney's office investigating or prosecuting a
3 1 case of dependent adult abuse.
3 2 Sec. 8. Section 235B.17, Code 2009, is amended to read as
3 3 follows:
3 4 235B.17 PROVISION OF PROTECTIVE SERVICES WITH THE CONSENT
3 5 OF DEPENDENT ADULT == CARETAKER REFUSAL.
3 6 1. If a caretaker of a dependent adult, who consents to
3 7 the receipt of protective services, refuses to allow provision
3 8 of the services, the department may petition the court with
3 9 probate jurisdiction in the county in which the dependent
3 10 adult resides for an order enjoining the caretaker from
3 11 interfering with the provision of services.
3 12 2. The petition shall be verified and shall allege
3 13 specific facts sufficient to demonstrate that the dependent
3 14 adult is in need of protective services and consents to the
3 15 provision of services and that the caretaker refuses to allow
3 16 provision of the services. The petition shall include all of
3 17 the following:
3 18 a. The name, date of birth, and address of the dependent
3 19 adult alleged to be in need of protective services.
3 20 b. The protective services required.
3 21 c. The name and address of the caretaker refusing to allow
3 22 the provision of services.
3 23 3. The court shall set the case for hearing within
3 24 fourteen days of the filing of the petition. The dependent
3 25 adult and the caretaker refusing to allow the provision of
3 26 services shall receive at least five days' notice of the
3 27 hearing.
3 28 4. If the judge finds by clear and convincing evidence
3 29 that the dependent adult is in need of protective services and
3 30 consents to the services and that the caretaker refuses to
3 31 allow the services, the judge may issue an order enjoining the
3 32 caretaker from interfering with the provision of the
3 33 protective services.
3 34 Sec. 9. Section 235B.18, Code 2009, is amended by adding
3 35 the following new subsection:
4 1 NEW SUBSECTION. 1A. The petition specified in subsection
4 2 1 shall be verified and shall include all of the following:
4 3 a. The name, date of birth, and address of the dependent
4 4 adult alleged to be in need of protective services.
4 5 b. The nature of the dependent adult abuse.
4 6 c. The protective services required.
4 7 Sec. 10. Section 235B.20, Code 2009, is amended by
4 8 striking the section and inserting in lieu thereof the
4 9 following:
4 10 235B.20 DEPENDENT ADULT ABUSE == INITIATION OF CHARGES ==
4 11 PENALTY.
4 12 1. Charges of dependent adult abuse may be initiated upon
4 13 complaint of private individuals or as a result of
4 14 investigations by social service agencies or on the direct
4 15 initiative of a county attorney or law enforcement agency.
4 16 2. A caretaker who intentionally commits dependent adult
4 17 abuse on a dependent adult in violation of this chapter is
4 18 guilty of a class "C" felony if the intentional dependent
4 19 adult abuse results in serious injury.
4 20 3. A caretaker who intentionally commits dependent adult
4 21 abuse on a dependent adult in violation of this chapter is
4 22 guilty of a class "D" felony if the intentional dependent
4 23 adult abuse results in bodily injury.
4 24 4. A caretaker who recklessly commits dependent adult
4 25 abuse on a dependent adult in violation of this chapter is
4 26 guilty of a class "D" felony if the reckless dependent adult
4 27 abuse results in serious injury.
4 28 5. A caretaker who recklessly commits dependent adult
4 29 abuse on a dependent adult in violation of this chapter is
4 30 guilty of an aggravated misdemeanor if the reckless dependent

4 31 adult abuse results in bodily injury.
4 32 6. A caretaker who otherwise intentionally, recklessly, or
4 33 knowingly commits dependent adult abuse upon a dependent adult
4 34 in violation of this chapter is guilty of a serious
4 35 misdemeanor.
5 1 7. A caretaker who commits dependent adult abuse by
5 2 exploiting a dependent adult in violation of this chapter is
5 3 guilty of a simple misdemeanor if the value of the property,
5 4 assets, or resources is one hundred dollars or less.
5 5 8. A caretaker who commits dependent adult abuse by
5 6 exploiting a dependent adult in violation of this chapter is
5 7 guilty of a serious misdemeanor if the value of the property,
5 8 assets, or resources is greater than one hundred dollars but
5 9 not more than two hundred dollars.
5 10 9. A caretaker who commits dependent adult abuse by
5 11 exploiting a dependent adult in violation of this chapter is
5 12 guilty of an aggravated misdemeanor if the value of the
5 13 property, assets, or resources is greater than two hundred
5 14 dollars but not more than five hundred dollars.
5 15 10. A caretaker who commits dependent adult abuse by
5 16 exploiting a dependent adult in violation of this chapter is
5 17 guilty of a class "D" felony if the value of the property,
5 18 assets, or resources is greater than five hundred dollars but
5 19 not more than one thousand dollars.
5 20 11. A caretaker who commits dependent adult abuse by
5 21 exploiting a dependent adult in violation of this chapter is
5 22 guilty of a class "C" felony if the value of the property,
5 23 assets, or resources is greater than one thousand dollars but
5 24 not more than ten thousand dollars.
5 25 12. A caretaker who commits dependent adult abuse by
5 26 exploiting a dependent adult in violation of this chapter is
5 27 guilty of a class "B" felony if the value of the property,
5 28 assets, or resources is greater than ten thousand dollars.
5 29 13. For purposes of this section, "value" shall be
5 30 determined in accordance with section 714.3.
5 31 Sec. 11. Section 235E.1, subsection 5, paragraph a,
5 32 subparagraph (1), subparagraph division (a), Code 2009, is
5 33 amended to read as follows:
5 34 (a) ~~A physical bodily injury to, or injury which is at a~~
5 35 ~~variance with the history given of the injury, or unreasonable~~
6 1 confinement, unreasonable punishment, harassment or assault of
6 2 a dependent adult which involves a breach of skill, care, and
6 3 learning ordinarily exercised by a caretaker in similar
6 4 circumstances. "Assault of a dependent adult" means the
6 5 commission of any act which is generally intended to cause
6 6 pain or injury to a dependent adult, or which is generally
6 7 intended to result in physical contact which would be
6 8 considered by a reasonable person to be insulting or offensive
6 9 or any act which is intended to place another in fear of
6 10 immediate physical contact which will be painful, injurious,
6 11 insulting, or offensive, coupled with the apparent ability to
6 12 execute the act.
6 13 Sec. 12. Section 235E.2, subsection 4, Code 2009, is
6 14 amended to read as follows:
6 15 4. An employee of a financial institution ~~may~~ shall report
6 16 suspected financial exploitation of a dependent adult to the
6 17 department.
6 18 Sec. 13. Section 726.7, Code 2009, is amended to read as
6 19 follows:
6 20 726.7 WANTON NEGLECT OF A RESIDENT OF A HEALTH CARE
6 21 FACILITY.
6 22 1. A person commits wanton neglect of a resident of a
6 23 health care facility when the person knowingly acts in a
6 24 manner likely to be injurious to the physical, ~~or~~ mental, or
6 25 emotional welfare of a resident of a health care facility as
6 26 defined in section 135C.1.
6 27 2. A person who commits wanton neglect resulting in bodily
6 28 injury to a resident of a health care facility is guilty of a
6 29 class "D" felony.
6 30 ~~2- 3.~~ A person who commits wanton neglect resulting in
6 31 serious injury to a resident of a health care facility is
6 32 guilty of a class "C" felony.
6 33 ~~3- 4.~~ A person who commits wanton neglect not resulting in
6 34 bodily injury or serious injury to a resident of a health care
6 35 facility is guilty of an aggravated misdemeanor.
7 1 Sec. 14. Section 726.8, Code 2009, is amended to read as
7 2 follows:
7 3 726.8 WANTON NEGLECT OR NONSUPPORT OF A DEPENDENT ADULT.
7 4 1. A ~~caretaker person~~ commits wanton neglect of a
7 5 dependent adult if the ~~caretaker person~~ knowingly acts in a
7 6 manner likely to be injurious to the physical, mental, or

7 7 emotional welfare of a dependent adult. ~~Wanton neglect of a~~
~~7 8 dependent adult is a serious misdemeanor.~~
7 9 a. A person who commits wanton neglect resulting in
7 10 serious injury to a dependent adult is guilty of a class "D"
7 11 felony.
7 12 b. A person who commits wanton neglect resulting in bodily
7 13 injury to a dependent adult is guilty of an aggravated
7 14 misdemeanor.
7 15 c. A person who commits wanton neglect not resulting in
7 16 serious injury or bodily injury to a dependent adult is guilty
7 17 of a serious misdemeanor.
7 18 2. A person who has legal responsibility either through
7 19 contract or court order for support of a dependent adult and
7 20 who fails or refuses to provide support commits nonsupport.
7 21 Nonsupport is a class "D" felony.
7 22 3. ~~A person alleged to have committed wanton neglect or~~
~~7 23 nonsupport of a dependent adult shall be charged with the~~
~~7 24 respective offense unless a charge may be brought based upon a~~
~~7 25 more serious offense, in which case the charge of the more~~
~~7 26 serious offense shall supersede the less serious charge.~~
7 27 4. 3. For the purposes of this section, "dependent adult"
7 28 means a dependent adult as defined in section 235B.2,
7 29 subsection 4, and "caretaker" means a caretaker as defined in
7 30 ~~section 235B.2, subsection 1.~~

7 31 EXPLANATION

7 32 This bill relates to actions injurious to dependent adults
7 33 and residents of health care facilities and provides
7 34 penalties.

7 35 The bill amends the definition of dependent adult abuse in
8 1 Code chapter 235B relating to dependent adult abuse and the
8 2 statewide collection and dissemination of dependent adult
8 3 abuse registry information. The bill excludes the element of
8 4 sexual arousal or desire from the definition of sexual
8 5 exploitation, adds harassment of a dependent adult to the
8 6 definition of a dependent adult and amends the definition of
8 7 sexual exploitation of a dependent adult to include the
8 8 transmission, display, taking of electronic images of the
8 9 unclothed breast, groin, buttock, anus, pubes, or genitals of
8 10 a dependent adult by a caretaker for a purpose not related to
8 11 treatment or diagnosis or as part of an ongoing investigation.
8 12 The bill excludes touching between domestic partners in an
8 13 intimate relationship in Code chapter 235B from the definition
8 14 of sexual exploitation and defines "intimate relationship" to
8 15 mean a significant romantic involvement between two persons
8 16 that need not include sexual involvement, but does not include
8 17 a casual social relationship or association in a business or
8 18 professional capacity which includes but is not limited to a
8 19 consideration of the duration of the relationship, the
8 20 frequency of interaction, whether the relationship has been
8 21 terminated, and the nature of the relationship, characterized
8 22 by either person's expectation of sexual or romantic
8 23 involvement.

8 24 The bill requires an employee of a financial institution to
8 25 report suspected financial exploitation of a dependent adult
8 26 to the department of human services.

8 27 The bill requires oral reports of suspected dependent adult
8 28 abuse be given to the appropriate law enforcement agency on
8 29 the first working day following the submitting of the report.

8 30 The bill allows an employee of a county attorney's office
8 31 assisting in an investigation of or prosecuting a case of
8 32 dependent adult abuse access to dependent adult abuse
8 33 information other than unfounded dependent adult abuse
8 34 information and provides an exception for certain written and
8 35 oral requirements for such persons seeking such information.

9 1 The bill authorizes a court with probate jurisdiction to
9 2 issue a protective order for a dependent adult who lacks the
9 3 ability to consent to protective services and whose caretaker
9 4 refuses to allow the protective services. The bill also
9 5 provides that the petition for a protective order in such a
9 6 case must be verified and contain certain specific
9 7 information.

9 8 The bill amends Code section 235B.20 relating to a
9 9 caretaker of a dependent adult who commits the crime of
9 10 dependent adult abuse. Under current law, a caretaker who
9 11 intentionally commits dependent adult abuse that results in
9 12 either serious injury or physical injury to the dependent
9 13 adult is guilty of a class "C" felony and a caretaker who
9 14 recklessly commits dependent adult abuse that results in
9 15 serious injury commits a class "D" felony and a caretaker who
9 16 recklessly commits dependent adult abuse that results in
9 17 physical injury commits an aggravated misdemeanor. The bill

lowers the intentional commission of dependent adult abuse causing physical injury by a caretaker of a dependent adult to a class "D" felony and adds a provision that a caretaker who intentionally, recklessly, or knowingly commits dependent adult abuse upon a dependent adult in the absence of any injury is guilty of a serious misdemeanor. In addition, the bill replaces the term "physical injury" with the term "bodily injury".

The bill amends Code section 235B.20 relating to the crime of financial exploitation of a dependent adult by a caretaker. Current law classifies two levels of financial exploitation of a dependent adult by a caretaker: a class "D" felony if the value of the property, assets, or resources of the dependent adult is more than \$100 and an aggravated misdemeanor if the value of the property, assets, or resources of the dependent adult is \$100 or less. The bill creates six levels of financial exploitation of a dependent adult ranging from a simple misdemeanor if the value of the property, assets, or resources of the dependent adult is \$100 or less to a class "B" felony if the value of the property, assets, or resources of the dependent adult exceeds \$10,000.

Consistent with the changes to Code chapter 235B, the bill amends the definition of dependent adult abuse in Code chapter 235E (dependent adult abuse in certain facilities and programs) by adding harassment of a dependent adult to the definition of dependent adult abuse and requires an employee of a financial institution to report suspected financial exploitation of a dependent adult to the department of human services.

The bill amends Code section 726.7 relating to the crime of wanton neglect of a resident of a health care facility to include conduct that is injurious to the emotional welfare of a resident of a health care facility. Current law provides that a person who commits wanton neglect resulting in serious injury to a resident of a health care facility is guilty of a class "C" felony and a person who commits wanton neglect not resulting in serious injury to a resident of a health care facility is guilty of an aggravated misdemeanor. The bill creates the additional crime of wanton neglect resulting in bodily injury to a resident of a health care facility, a class "D" felony, and specifies that a person who commits wanton neglect not resulting in any type of injury (bodily or serious) to a resident of a health care facility is guilty of an aggravated misdemeanor.

The bill amends Code section 726.8 relating to the crime of wanton neglect or nonsupport of a dependent adult. Current law provides that a caretaker who commits wanton neglect of a dependent adult commits a serious misdemeanor. The bill amends current law by substituting the word "person" for "caretaker" and by adding certain gradations of the offense of wanton neglect depending on the injuries suffered by the dependent adult. The bill provides that a person who commits wanton neglect resulting in serious injury to a dependent adult is guilty of a class "D" felony, a person who commits wanton neglect resulting in bodily injury to a dependent adult is guilty of an aggravated misdemeanor, and a person who commits wanton neglect not resulting in serious injury or bodily injury to a dependent adult is guilty of a serious misdemeanor.

A simple misdemeanor is punishable by confinement for no more than 30 days or a fine of at least \$65 but not more than \$625 or by both, a serious misdemeanor is punishable by confinement for no more than one year and a fine of at least \$315 but not more than \$1,875, an aggravated misdemeanor is punishable by confinement for no more than two years and a fine of at least \$625 but not more than \$6,250, a class "D" felony is punishable by confinement for no more than five years and a fine of at least \$750 but not more than \$7,500, a class "C" felony is punishable by confinement for no more than 10 years and a fine of at least \$1,000 but not more than \$10,000, and a class "B" felony is punishable by confinement for no more than 25 years.

LSB 1340DP 83
rh/rj/8.1